

FEB 11 2003

Brickman v. Scheitlin
Nos. 01-56040 and 01-56763

CATHY A. CATTERSON
U.S. COURT OF APPEALS

RAWLINSON, Circuit Judge, Dissenting

The Plaintiffs purchased the residential property in question “‘AS IS,’ in its present physical condition.” In addition to the specific disclosures made by the sellers in their disclosure statement, the parties expressly agreed that “inspection reports completed pursuant to the contract of sale” would “satisfy [sellers’] disclosure obligations.”

Plaintiffs subsequently commissioned a comprehensive inspection encompassing “the grounds, including evidence of soil erosion and surface drainage patterns.”

Ms. Brickman acknowledged that the inspector pointed out drainage problems at the exterior of the home, and recommended consulting a “qualified plumbing contractor” to determine the “need to re-pipe the entire house.” With that knowledge, it cannot be said that the sewer and drainage problems referenced by the majority were “not known to, or within the reach of the diligent attention and observation of the buyer.” *Alexander v. McKnight*, 7 Cal. App. 4th 973, 977 (1992) (citation omitted).

The majority’s analysis in this case unfortunately fosters a “see no evil” approach on the part of the buyer. Accordingly, I respectfully dissent.